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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 LISA GRANDE, individually and as
12 successor-in-interest to THE ESTATE
13 OF GERALD BRANTLEY, Deceased,

14 Plaintiff,

15 vs.

16 BORG-WARNER MORSE TEC,
17 INC., et al.,

18 Defendants.

CASE NO. 12cv540-GPC(JMA)

**ORDER DENYING DEFENDANT
CRANE CO.'S MOTION FOR
SUMMARY JUDGMENT**

[Dkt. No. 195.]

19 Before the Court is a motion for summary judgment filed by Crane Co., the sole
20 remaining Defendant in the above-captioned matter. (Dkt. No. 195.) The parties have
21 fully briefed the motion, and the Court held a hearing on the motion on Friday, March
22 7, 2014. Ethan Horn, Esq. appeared on behalf of Plaintiff and Geoffrey Davis, Esq.
23 appeared on behalf of Defendant Crane Co. Based on a review of the briefs, supporting
24 documentation, oral arguments of counsel, and the applicable law, the Court DENIES
25 Defendant Crane Co.'s motion for summary judgment and GRANTS Defendant Crane
26 Co.'s request to sever the issue of punitive damages for trial.

PROCEDURAL BACKGROUND

27 On January 30, 2012, Gerald Brantley ("Decedent") filed an action for
28 negligence, strict liability, false representation, and intentional failure to warn in San

1 Diego County Superior Court against twenty-nine Defendants. (Dkt. No. 1-1.)
 2 Defendant CBS Corporation removed the action to federal court on March 2, 2012.
 3 (Dkt. No. 1.) On October 11, 2012, the case was transferred to the undersigned judge.
 4 (Dkt. No. 85.)

5 On February 8, 2013, Gerald Brantley passed away. On April 30, 2013, Plaintiff
 6 Lisa Grande (“Plaintiff”) filed a first amended complaint for wrongful death. (Dkt. No.
 7 139.) Plaintiff alleges seven causes of action, for: (1) negligence; (2) strict liability; (3)
 8 false representation; (4) intentional tort/intentional failure to warn; (5)
 9 premises/contractor liability; (6) general negligence; and (7) vicarious liability. (*Id.*)

10 Plaintiff has since dismissed a number of Defendants from the above-captioned
 11 matter. Only Plaintiff’s claims against Defendant Crane Co. remain.

12 **FACTUAL BACKGROUND**

13 There is no dispute among the Parties regarding the following facts. Decedent
 14 Gerald Brantley passed away on February 8, 2013. At the time of his death,
 15 Decedent suffered from malignant mesothelioma, a form of cancer linked to
 16 exposure to asbestos. Plaintiff Lisa Grande, Decedent’s daughter and the successor
 17 in interest to the Estate of Gerald Brantley, alleges Decedent was exposed to
 18 asbestos from Crane Co.’s products, resulting in the diagnosis of his asbestos-
 19 related disease and his eventual death. Specifically, Plaintiff alleges Decedent was
 20 exposed to Crane Co.’s products during his career as a Navy machinist.

21 Decedent served aboard the USS Fort Marion in the United States Navy from
 22 approximately 1958 to 1960.¹ The USS Fort Marion was commissioned in January
 23 1946. (Dkt. No. 207-17 at ¶ 20.) As a boilerman, Decedent tended to boilers, pumps,

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 26 ¹ Although Plaintiff’s opposition to Defendant Crane Co.’s motion for summary
 27 judgment states that Decedent worked aboard the USS Fort Marion “for approximately
 28 3 years beginning in 1958 or 1959,” (Dkt. No. 207 at 2), Plaintiff also states that it is
 “undisputed” that Decedent’s claims against Crane Co. are limited to Decedent’s
 service in the Navy from 1958-1960 while aboard the USS Fort Marion. (Dkt. No. 207-
 17 ¶ 6.)

1 and valves located in two boiler rooms aboard the vessel. (Dkt. No. 207-18 ¶ 2.)
 2 Decedent performed work on globe valves, gate valves, ball valves, micrometer
 3 valves, and steam valves while aboard the USS Fort Marion. (Id. ¶ 3.) Plaintiff's
 4 claims as to Decedent's exposure to Defendant Crane Co.'s asbestos-containing
 5 products is limited to Decedent's service in the Navy while aboard the USS Fort
 6 Marion. (Dkt. No. 207-17 ¶¶ 6, 19.)

7 In particular, Plaintiff claims that Decedent's work aboard the USS Fort
 8 Marion exposed Decedent to asbestos from Defendant Crane Co.'s valves as well as
 9 to the internal gasket and packing material associated with the Crane Co. valves.²
 10 (Dkt. No. 207-17 ¶ 12) (citing Dkt. No. 195-10, Farkas Decl. Ex. 6, Pl. Resp. to
 11 Interrog. No. 1 at 6.) Plaintiff focuses her asbestos exposure claims against Crane
 12 Co. to Decedent's exposure to Crane Co. valves used in steam applications, because
 13 steam valves "had to be able to withstand the heat associated with these products"
 14 and therefore, at the time, necessarily contained asbestos. (Id.)

15 A valve is a device which is used to control the flow of liquids and gasses.
 16 (Dkt. No. 207-6, Stewart Decl. Ex. G at 85.) As early as 1858 until the mid-1980s,
 17 Crane Co. manufactured and sold industrial valves that contained internal material
 18 composed or partially-composed of asbestos. (Id. at 86.) Although the industrial
 19 valves manufactured by Crane Co. were themselves made of "steel, bronze, and
 20 other metals," the valves had enclosed within their metal structure "asbestos-
 21 containing gaskets, packing, or discs." (Dkt. No. 207-6, Stewart Decl. Ex. F at 70.)
 22 At issue in this case are the asbestos-containing "gaskets" encased within Crane Co.
 23 valves which served to prevent metal-to-metal contact and prevent leakage, (Dkt.
 24 No. 207-6, Stewart Decl. Ex. I at 108), and asbestos-containing "packing," often in
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26 ²Although Plaintiff's interrogatory response also states that Decedent was
 27 exposed to Crane Co. "pumps," Plaintiff has abandoned claims related to Crane Co.
 28 pumps. (Dkt. No. 207-17, Pl. Resp. to Def. Crane Co.'s Statement of Undisputed Facts
 ¶ 12) (mentioning only Crane Co. valves and the packing and gaskets associated with
 those valves).

1 rope-like form, wrapped around the internal valve stems and also encased within
2 Crane Co. valves. (Dkt. No. 195-1 at 12.)

3 As to Decedent's work with steam valves, Decedent testified that each time
4 he disassembled a valve to access the internal bonnet gasket and packing, his work
5 released dust in the air, which Decedent inhaled. (Dkt. No. 207-18 ¶ 4.) It is
6 undisputed that Decedent never himself installed a new Crane Co. valve aboard the
7 USS Fort Marion. (Dkt. No. 207-17 ¶ 33.) However, Plaintiff claims Decedent was
8 exposed to Crane Co.'s asbestos-containing internal gasket and packing material
9 when performing replacement and maintenance work on new Crane Co. valves
10 installed by others aboard the USS Fort Marion. (Dkt. No. 207 at 3.) Decedent
11 testified that he knew the Crane Co. valves he worked on were new for two reasons:
12 (1) because opening the valve to access the internal parts would inevitably leave
13 marks on the valves, nuts, and bolts; and (2) replaced packing glands and gaskets
14 would be clean rather than dry and caked on. (Dkt. No. 207-1, Stewart Decl. Ex. A
15 at 1274:13-1276:10.)

16 The Parties do not dispute that Crane Co. sold products that contained
17 asbestos prior to 1985. Crane Co. admits that it manufactured and sold valves that
18 contained asbestos components as early as 1858. (Dkt. No. 207-18 ¶ 25) (citing Dkt.
19 No. 201-1, Lannus Decl. Ex. 41). Crane Co. manufactured valves with internal
20 asbestos-containing gaskets and packing material until the late 1980s. (*Id.*) (citing
21 Dkt. No. 201-1, Lannus Decl. Ex. 45.) Plaintiff has introduced evidence that Crane
22 Co. did not affix warnings regarding the hazards of asbestos to their products until
23 the mid-1980s. (*Id.*) (citing Dkt. No. 201-1, Lannus Decl. Ex. 40.)

24 **LEGAL STANDARD**

25 Federal Rule of Civil Procedure 56 empowers the Court to enter summary
26 judgment on factually unsupported claims or defenses, and thereby "secure the just,
27 speedy and inexpensive determination of every action." Celotex Corp. v. Catrett,

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1 477 U.S. 317, 325, 327 (1986). Summary judgment is appropriate if the “pleadings,
2 depositions, answers to interrogatories, and admissions on file, together with the
3 affidavits, if any, show that there is no genuine issue as to any material fact and that
4 the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). A
5 fact is material when it affects the outcome of the case. Anderson v. Liberty Lobby,
6 Inc., 477 U.S. 242, 248 (1986).

7 The moving party bears the initial burden of demonstrating the absence of
8 any genuine issues of material fact. Celotex Corp., 477 U.S. at 323. The moving
9 party can satisfy this burden by demonstrating that the nonmoving party failed to
10 make a showing sufficient to establish an element of his or her claim on which that
11 party will bear the burden of proof at trial. Id. at 322-23. If the moving party fails to
12 bear the initial burden, summary judgment must be denied and the court need not
13 consider the nonmoving party’s evidence. Adickes v. S.H. Kress & Co., 398 U.S.
14 144, 159-60 (1970).

15 Once the moving party has satisfied this burden, the nonmoving party cannot
16 rest on the mere allegations or denials of his pleading, but must “go beyond the
17 pleadings and by her own affidavits, or by the ‘depositions, answers to
18 interrogatories, and admissions on file’ designate ‘specific facts showing that there
19 is a genuine issue for trial.’” Celotex, 477 U.S. at 324. If the non-moving party fails
20 to make a sufficient showing of an element of its case, the moving party is entitled
21 to judgment as a matter of law. Id. at 325. “Where the record taken as a whole could
22 not lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine
23 issue for trial.’” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
24 587 (1986). In making this determination, the court must “view[] the evidence in the
25 light most favorable to the nonmoving party.” Fontana v. Haskin, 262 F.3d 871, 876
26 (9th Cir. 2001). The Court does not engage in credibility determinations, weighing
27 of evidence, or drawing of legitimate inferences from the facts; these functions are
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1 for the trier of fact. Anderson, 477 U.S. at 255.

2 **DISCUSSION**

3 Crane Co. moves for summary judgment on two grounds, arguing that: (1)
4 Plaintiff cannot prove exposure to Crane Co.’s asbestos-containing products; and
5 (2) Plaintiff has set forth no evidence that Crane Co. knew of the hazards of
6 asbestos at the time of Decedent’s alleged exposure to Crane Co. asbestos-
7 containing products as required to support Plaintiff’s claim for punitive damages.
8 (Dkt. No. 195-1.)

9 Under California law, “Plaintiffs may prove causation in an asbestos case by
10 demonstrating that the plaintiff’s or decedent’s exposure to the defendant’s
11 asbestos-containing product in reasonable medical probability was a substantial
12 factor in contributing to the aggregate dose of asbestos the plaintiff or decedent
13 inhaled or ingested, and hence to the risk of developing asbestos-related cancer.”
14 McGonnell v. Kaiser Gypsum Co., 98 Cal. App. 4th 1098, 1103 (2002) (citing
15 Rutherford v. Owens–Illinois, Inc., 16 Cal. 4th 953, 975–76 (1997)); see also
16 O’Neil v. Crane Co., 53 Cal. 4th 335, 345 (2012) (“To the extent [the decedent] was
17 exposed to dust generated during work on pumps and valves, no evidence was
18 presented that any of the asbestos-containing dust came from a product made by
19 [the defendants].”). In asbestos litigation, a plaintiff must show “exposure to a
20 defendant’s product and biological processes from the exposure which result in
21 disease.” Lineaweaver v. Plant Insulation Co., 31 Cal. App. 4th 1409, 1416 (1995).

22 The “proper analysis is to ask [1] whether the plaintiff has proven exposure to
23 a defendant’s product, of whatever duration, so that exposure is a possible factor in
24 causing the disease and then [2] to evaluate whether the exposure was a substantial
25 factor.” Lineaweaver, 31 Cal. App. 4th at 1416; see also Andrews v. Foster Wheeler
26 LLC, 138 Cal. App. 4th 96, 102 (2006) (“To ultimately prevail in their underlying
27 claim, plaintiffs would need to establish that [the plaintiff]’s exposure to a product
28 attributable to [the defendant] was to a reasonable medical probability a substantial

1 factor in contributing to any asbestos-related disease suffered by him.”).

2 **I. Exposure to Crane Co. Products**

3 A threshold issue in asbestos litigation is exposure to the defendant’s product,
 4 and it is plaintiff’s burden to demonstrate exposure. McGonnell v. Kaiser Gypsum
 5 Co., 98 Cal. App. 4th 1098, 1103 (2002) (“If there has been no exposure, there is no
 6 causation.”). While plaintiffs may demonstrate exposure with circumstantial
 7 evidence, see Lineaweaver v. Plant Insulation Co., 31 Cal. App. 4th 1409, 1419-20
 8 (1995) (finding plaintiff Lineaweaver’s circumstantial evidence “sufficient to support
 9 a reasonable inference of exposure”), the circumstantial evidence must be “of
 10 sufficient weight to support a reasonable inference of causation.” Dumin v. Owens-
 11 Corning Fiberglas Corp., 28 Cal. App. 4th 650, 656 (1994) (finding circumstantial
 12 evidence required a “stream of conjecture and surmise” to support a finding of
 13 exposure to defendant’s products); see also Lineaweaver, 31 Cal. App. 4th at 1421-
 14 22 (finding plaintiff King’s circumstantial evidence created “a dwindling stream of
 15 probabilities that narrow into conjecture”).

16 Defendant Crane Co. argues discovery has provided no evidence that
 17 Decedent encountered asbestos supplied by Crane Co. while working on the USS
 18 Fort Marion. (Dkt. No. 195-1 at 1.) According to Crane Co., “Plaintiff was unable to
 19 identify a single specific document evidencing that Decedent was exposed to
 20 asbestos for which Crane was liable.” (Dkt. No. 195-1 at 3.) Crane Co. further
 21 argues that Decedent, as the only witness with percipient knowledge about the case,
 22 did not know much about the valves alleged to be from Crane Co.; did not know
 23 whether the parts he replaced were original to the ship or previously replaced; and
 24 did not order or have personal knowledge regarding the source of any replacement
 25 parts. (Dkt. No. 195-1 at 3-5.)

26 In opposition, Plaintiff argues that she has proffered adequate evidence that
 27 Decedent was exposed to Crane Co.’s originally-installed asbestos containing
 28 products to raise a triable issue of material fact. (Dkt. No. 207 at 2-3.) In particular,

1 Plaintiff points to Decedent's testimony that he knew that a portion of the Crane Co.
 2 valves from which he removed internal packing and gasket material were "new,"
 3 because he had observed that performing any work disassembling valves left
 4 tell-tale markings on those valves. (Dkt. No. 207 at 3.)

5 The Court finds Plaintiff's proffered evidence sufficient to raise a triable
 6 issue of material fact as to whether Decedent was exposed to asbestos-containing
 7 products made by Crane Co. In particular, Plaintiff has introduced declarations and
 8 deposition testimony that Decedent worked on steam valves embossed with the
 9 name "Crane" while on the USS Fort Marion, (Dkt. No. 207-2, "Brantley Depo." at
 10 629, 1280); that Decedent's work on steam valves typically involved disassembling
 11 the valves in order to access the internal asbestos-containing bonnet gasket and
 12 packing, (*id.* at 26-33); that some of the Crane Co. valves serviced by Decedent
 13 were "new,"³ (*id.* at 1274-75); that Crane Co. valves contained asbestos packing and
 14 gasket material during the 1960s, (Dkt. No. 207-3, "Holstein Decl." ¶ 30) (citing
 15 Crane Co. interrogatory responses); and that asbestos was used in Crane Co. steam
 16 valves due to the state of scientific knowledge at that time and the high
 17 temperatures steam valves needed to withstand. (*Id.* ¶ 31.)

18 While much of Decedent's testimony provides circumstantial rather than
 19 direct evidence, Decedent's testimony establishes an eyewitness account
 20 corroborated by expert testimony and Crane Co. admissions that may support a
 21 reasonable inference that Decedent was exposed to Crane Co. asbestos-containing
 22 products. *See Lineaweaver*, 31 Cal. App. 4th at 1419-20. In particular, the Court
 23 finds that Plaintiff has introduced Decedent's testimony that he recalled seeing
 24 "Crane" embossed directly on the valves themselves, (Brantley Depo. at 629, 1280),

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 26 ³The Court notes that Decedent and Plaintiff's counsel appear to define "new"
 27 valves as valves that still included the original packing material installed by the
 28 manufacturer of the valve (i.e. a valve for which the packing material had not been
 previously replaced by Decedent or another boilerman), regardless of whether the valve
 itself was originally installed on the USS Fort Marion or subsequently installed as a
 replacement valve on the USS Fort Marion. (*See* Dkt. No. 207 at 3; Brantley Depo. at
 1274-75.)

as well as Crane Co.’s admission that many of its valves “bore the name ‘Crane,’ marked directly on the valve,” (Dkt. No. 207-5, Holstein Decl. Ex. 4 at 12). The Court declines to weigh Decedent’s direct testimony or engage in credibility determinations at summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In addition, Plaintiff has introduced evidence that Crane Co. has been “a prominent manufacturer of industrial equipment, particularly valves;” has been “one of the market leaders in their field;” and “has sold a significant number of valves to the United States Navy.” (Dkt. No. 207-3, Holstein Decl. ¶ 30.) As such, the Court finds Plaintiff’s evidence related to Decedent’s exposure to Crane Co. products supports a reasonable inference of exposure. Lineaweaver, 31 Cal. App. 4th at 1420 (distinguishing plaintiff’s case from Dumin, 28 Cal. App. 4th at 650, because the plaintiff had “established that defendant’s product was definitely at [plaintiff’s] work site and that it was sufficiently prevalent to warrant an inference that plaintiff was exposed to it during his more than 30 years of working with and around asbestos throughout the refinery.”). Accordingly, the Court DENIES Defendant Crane Co.’s motion for summary judgment based on claims that Plaintiff is unable to demonstrate exposure to Crane Co. asbestos-containing products.

II. Punitive Damages

Generally, under California law, punitive damages may be awarded only when the trier of fact finds, by clear and convincing evidence, that the defendant acted with malice, fraud, or oppression. Cal. Civ. Code § 3294(a). “In the usual case, the question of whether the defendant’s conduct will support an award of punitive damages is for the trier of fact, since the degree of punishment depends on the peculiar circumstances of each case.” Spinks v. Equity Residential Briarwood Apartments, 171 Cal. App. 4th 1004, 1053 (2009) (internal quotations and citation omitted); see also Egan v. Mutual of Omaha Ins. Co., 24 Cal. 3d 809, 821 (1979) (“Determinations related to [the] assessment of punitive damages have traditionally been left to the discretion of the jury.”); Amadeo v. Principal Mut. Life Ins. Co., 290

1 F.3d 1152, 1165 (9th Cir. 2002) (same). Summary judgment on a claim for punitive
 2 damages is proper only “when no reasonable jury could find the plaintiff’s evidence
 3 to be clear and convincing proof of malice, fraud or oppression.” See Hoch v.
 4 Allied-Signal, Inc., 24 Cal. App. 4th 48, 60-61 (1994).

5 Defendant argues Plaintiff has set forth no evidence that Crane Co. knew of
 6 the hazards of asbestos at the time of, or before, Mr. Brantley’s alleged exposure to
 7 a Crane Co. product to support a claim for punitive damages. (Dkt. No. 195-1 at 8.)
 8 In response, Plaintiff argues that she has “extensive evidence that Crane Co.’s
 9 conduct has risen to the standard of ‘conscious disregard’ of others’ health and
 10 safety sufficient to create a triable issue of fact as to the availability of punitive
 11 damages.” (Dkt. No. 207 at 16.) According to Plaintiff, “Crane concealed the known
 12 hazards of its products from [Decedent] and engaged in ‘despicable conduct’ which
 13 [was] carried on . . . with a willful and conscious disregard of the rights or safety of
 14 others.” (Dkt. No. 207 at 24) (citing Cal. Civ. Code § 3294).⁴

15 Under the punitive damages statute, malice is defined as “despicable conduct
 16 which is carried on by the defendant with a willful and conscious disregard of the
 17 rights or safety of others.” Cal. Civ. Code, § 3294(c)(1). “To establish conscious
 18 disregard, the plaintiff must show ‘that the defendant was aware of the probable
 19 dangerous consequences of his conduct, and that he wilfully and deliberately failed
 20 to avoid those consequences.’ ” Hoch, 24 Cal. App. 4th at 61 (citing Taylor v.
 21 Superior Court, 24 Cal. 3d 890, 895-96 (1979); Mock v. Michigan Millers Mutual
 22 Ins. Co., 4 Cal. App. 4th 306, 329 (1992)).

23 Notwithstanding Crane Co.’s assertion to the contrary, the Court finds that
 24 Plaintiff has offered substantial evidence to raise a triable issue of material fact
 25 regarding punitive damages. Specifically, Plaintiff submits evidence that Crane Co.

27 ⁴The Court notes that Plaintiff makes several references to “Mr. Willis” in her
 28 opposition to Crane Co.’s motion for summary judgment. (Dkt. No. 207 at 21, 22, 24)
 The Court notes that Mr. Willis is a plaintiff in a case before another Judge in this
 district.

1 knew that use of its valves required periodic replacement of the internal asbestos-
 2 containing packing and gaskets; that Crane Co. managers and engineers were
 3 members of trade organizations that regularly discussed asbestos hazards beginning
 4 in the 1930s; that Crane Co. has admitted that Crane Co. management knew that
 5 “breathing asbestos caused disabling and fatal disease”; and that Crane Co. did not
 6 place warnings on valves despite this knowledge, though it was feasible to do so.
 7 (Dkt. No. 207-18.) Accordingly, the Court **DENIES** Crane Co.’s motion for partial
 8 summary judgment on the issue of Plaintiff’s entitlement to punitive damages.

9 However, Crane Co. claims that judges overseeing federal asbestos MDL No.
 10 875 have long severed plaintiffs’ claims for punitive damages prior to remanding
 11 asbestos cases for trial. (Dkt. No. 195-1 at 20.) Crane Co. requests that this Court
 12 similarly sever the issue of punitive damages in the event summary adjudication is
 13 not granted. (*Id.*) Plaintiff has not opposed this request. Finding good cause
 14 therefor, the Court **GRANTS** Crane Co.’s request to sever the issue of punitive
 15 damages for trial. See Rapid Displays Inc. v. Gorder, 155 Fed. Appx. 962 (9th Cir.
 16 2005) (unpublished opinion) (approving district court’s grant of an unopposed
 17 motion to bifurcate trial into liability and punitive damages phases, but remanding
 18 where the district court failed to proceed with the attorney’s fees and punitive
 19 damages phase of trial).

20 **CONCLUSION AND ORDER**

21 Based on the foregoing, the Court hereby **DENIES** Defendant Crane Co.’s
 22 motion for summary judgment, but **GRANTS** Defendant Crane Co.’s request to
 23 sever the issue of punitive damages for trial. (Dkt. No. 195.)

24 **IT IS SO ORDERED.**

25 DATED: August 18, 2014

26 
 27 HON. GONZALO P. CURIEL
 28 United States District Judge